

1 Richard M. Heimann (State Bar No. 063607)
E-mail: *rheimann@lchb.com*
2 Michael W. Sobol (State Bar No. 194857)
E-mail: *msobol@lchb.com*
3 Roger Heller (State Bar No. 215348)
E-mail: *rheller@lchb.com*
4 LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
5 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
6 Telephone: (415) 956-1000
Facsimile: (415) 956-1008
7

8 Richard D. McCune (State Bar No. 132124)
rdm@mccunewright.com
9 Jae (Eddie) K. Kim (State Bar No. 236805)
jkk@mccunewright.com
MCCUNEWRIGHT, LLP
10 2068 Orange Tree Lane, Suite 216
Redlands, CA 92374
11 Telephone: (909) 557-1250
Facsimile: (909) 557-1275
12

Attorneys for Plaintiffs and the Class
13

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 VERONICA GUTIERREZ, ERIN
18 WALKER, and WILLIAM SMITH, as
individuals and on behalf of all others
19 similarly situated,

20 Plaintiffs,

21 v.

22 WELLS FARGO BANK, N.A.,

23 Defendant.
24
25
26
27
28

Case No. C 07-05923-WHA

**DECLARATION OF RICHARD M.
HEIMANN IN SUPPORT OF MOTION
FOR ATTORNEYS' FEES AND COSTS**

Date: May 21, 2015
Time: 2:00 p.m.
Judge: Hon. William H. Alsup

1 I, Richard M. Heimann, hereby declare and state:

2 1. I served as Plaintiffs' lead trial counsel in this action. I am a member in good
3 standing of the State Bar of California, admitted to practice in this Court, and since 1986 have
4 been a partner of Lieff, Cabraser, Heimann & Bernstein, LLP ("LCHB"). I base this declaration
5 on my own personal knowledge, and if called upon to testify, I could and would testify
6 competently to the truth of the matters stated herein.

7 2. I make this declaration in support of Class Counsel's Motion Attorneys' Fees and
8 Costs. I have over 40 years of experience in trial courts in the area of complex litigation,
9 including class action litigation, and have tried over 30 class and complex civil cases. Based on
10 my experience, I respectfully submit that Class Counsel's request for an award of attorneys' fees
11 in an amount equal to 25% of the \$203 million judgment we obtained for the Class is reasonable
12 and warranted given the totality of the circumstances of this case.

13 3. Pursuant to the Court's Order re Attorney's Fees and Expenses dated January 30,
14 2015 (Doc. No. 619), detailed descriptions of counsel's time and efforts are being submitted in
15 support of the present motion. For LCHB, the detailed time submission is included as part of the
16 accompanying declaration of Roger N. Heller. I have set forth below an overview of LCHB's
17 efforts in this litigation.

18 **BACKGROUND OF LCHB'S REPRESENTATION OF THE CLASS**

19 4. On May 3, 2009, LCHB was approached by Richard D. McCune of
20 McCuneWright ("M&W"), then serving as Class Counsel in this matter, about the possibility of
21 LCHB joining as co-counsel and lead trial counsel in this action. At the time, the trial in this case
22 was scheduled to commence in approximately one month, meaning that LCHB would have to get
23 up to speed very quickly regarding, among other things, the evidentiary record and posture and
24 history of the case, in order to sufficiently prepare for trial.

25 5. At that time, for many years LCHB was one of the few class action firms willing
26 to represent consumers in litigation regarding bank overdraft fees and the reordering of
27 transactions. This litigation has proven to be both difficult and risky, and at times, the cases that
28 LCHB pursued were dismissed on early defendants' motions. *See Sturm v. Wells Fargo Bank,*

1 N.A., S.F. Superior Ct. Case No. 996873; *Snow v. Compass Bancshares, Inc.*, Alab. Cir. Ct,
2 Mobil County, Case No. CV-98-2384. In the face of this risk, beginning in late 2008, LCHB
3 nevertheless undertook the representation of consumers in cases regarding overdraft charges with
4 respect to debit card transactions. In early 2009, LCHB filed a class action against Bank of
5 America, challenging its re-ordering practices. *Yourke , et al, v. Bank of America*, NA, S.F.
6 Superior Ct., Case No. CGC-09-4871000 (subsequently removed to federal court).

7 6. With respect to Wells Fargo California, we recognized that there was a danger that
8 some or all of the claims could be found to have been released by the settlement in another class
9 action against Wells Fargo, *Smith v. Wells Fargo Bank, N.A.*, (S.D. Superior Court Case No. GIC
10 802664). While the claims in *Smith* were limited to Wells Fargo's failure to adequately disclose
11 its "shadow line" practice, the release language in the *Smith* settlement agreement was extremely
12 broad and, if enforced according to its literal terms, would likely have covered the claims raised
13 in this action.

14 7. Shortly after M&W approached LCHB, we reached an agreement in principal to
15 co-counsel in this action. LCHB agreed to appear for the Class, take on the role of lead trial
16 counsel, advance all litigation expenses (including assuming the responsibility for significant
17 expenses outstanding at that time), and co-represent the Class for all purposes. This agreement
18 was reached prior to the May 13, 2009 Case Management Conference in this case, during which
19 the Court rejected the parties' proposed settlement and suggested to Mr. McCune that he retain a
20 firm such as LCHB for this case, and prior to the parties' mediation with Magistrate Judge Spero
21 that led to the settlement that this Court rejected. (LCHB and M&W had agreed that if a
22 settlement was reached at such mediation and eventually approved, LCHB would not appear or
23 serve as co-counsel.)

24 8. LCHB agreed to represent the Class and advance considerable out-of-pocket
25 litigation costs, despite the significant challenges remaining in the case (including proving Wells
26 Fargo's liability and class damages), and despite the fact that a fair assessment of the record at
27 that time indicated that achieving a positive result for the Class would require a full trial on the
28 merits, and the inevitable appeal of any judgment entered in favor of the Class. LCHB knowingly

1 took on the representation of the Class despite the well-known risks inherent in a trial of complex
2 class-wide issues. Despite these risks, LCHB accepted the responsibilities of representing the
3 Class, and from that moment forward has committed all resources necessary to litigate this case to
4 a successful result.

5 **PRETRIAL PROCEEDINGS**

6 9. The background of the pretrial proceedings prior to LCHB's involvement,
7 including considerable efforts in successfully litigating this action through the pleading and class
8 certification stage, and in overcoming Wells Fargo's numerous dispositive and other pre-trial
9 motions, is set forth in the Declaration of Richard D. McCune, submitted with the present motion.

10 10. At the time LCHB became involved in this matter, a trial was scheduled for about
11 a month later. However, the trial did not commence until about 11 months later. Prior to the trial,
12 LCHB and M&W spent significant time and resources regarding the restitution analysis essential
13 to proof of class harm. Among other things, this included negotiating access to the necessary
14 Wells Fargo data, working to coordinate Plaintiffs' restitution theories with Mr. Olsen's analysis
15 of the data, helping with the preparation of Mr. Olsen's expert reports and to prepare him to
16 testify at trial, taking and defending the depositions of both parties' damages experts, and
17 overcoming Wells Fargo's multiple attempts to exclude and/or discredit Mr. Olsen's analysis.

18 11. During the time leading up to trial, Wells Fargo moved for summary judgment
19 and/or class decertification, premised on the assertion that Plaintiffs' expert's damages analysis
20 and testimony should be excluded. Litigating Wells Fargo's motion required Class Counsel to
21 take the depositions of Wells Fargo's two damages experts, extensive briefing, and a hearing on
22 the motion. Wells Fargo's motion was denied.

23 12. The parties filed several motions *in limine*, which were heard at the Pre-Trial
24 Conference on April 19, 2010. These motions included attempts to exclude both documentary
25 evidence and testimony, as well as Wells Fargo's unsuccessful attempt to exclude all evidence
26 relating to "shadow line" based on the *Smith* settlement. Researching, briefing, and arguing these
27 motions required the hard work of multiple attorneys and other staff at both LCHB and M&W.
28

1 witness, and dealing with the matter of the settlement in the *Smith* case. During the course of
2 trial, we also wrestled with Wells Fargo's redaction of several key documents during discovery,
3 Wells Fargo's changing story of how it posted check transactions prior to adopting high-to-low
4 posting, and the review and flagging of customer complaints concerning Wells Fargo's overdraft
5 fee practices. Litigating these many issues mid-trial required the hard work of numerous
6 attorneys and staff outside of the courtroom and, further, because of the relation of these issues to
7 the substance of the trial itself, reasonably required the participation and appearance of additional
8 attorneys at trial.

9 17. After the evidentiary portion of trial concluded on May 7, 2010, the parties filed
10 competing Proposed Findings of Fact and Conclusions of Law on May 19, 2010, and their
11 responses to each other on May 26, 2010. Preparing these submissions required a significant
12 effort to review the extensive testimonial and documentary evidence, research the relevant case
13 law, and craft proposed findings of fact and rulings of law, and the responses. Subsequently, at
14 the Court's request, Class Counsel submitted briefing regarding the effect of the release in the
15 *Smith* case, and further responded to Wells Fargo's "Notice of Potential Jurisdictional Defect."
16 Class Counsel, of course, also prepared for and presented closing argument to the Court on July 9,
17 2010.

18 **POST-TRIAL PROCEEDINGS**

19 18. The Court issued its Findings of Fact and Conclusions of Law After Bench Trial
20 on August 10, 2010. Class Counsel's responsibilities to the Class have continued since that time.
21 Five months after the trial concluded, Wells Fargo moved to amend the Court's Findings, based
22 on its purported "late discovery" of the so-called "Norwest study," which Wells Fargo had relied
23 upon for years in this case but which never materialized prior to the close of evidence, and which,
24 Plaintiffs contested actually *supported* the Court's Findings. Class Counsel successfully opposed
25 Wells Fargo's motion. Moreover, Class Counsel worked hard to prepare their portions of the
26 Joint Recommendation and their proposed forms of Judgment, as ordered by the Court, meeting
27 and conferring with Wells Fargo's counsel in the process as necessary.
28

1 19. The Court entered final Judgment in this case on October 25, 2010. Thereafter, in
2 an effort to ensure that the Class would be able to recover the restitution ordered by the Court,
3 Class Counsel opposed Wells Fargo's motion for a stay of execution pending appeal without the
4 posting of a *supersedeas* bond.

5 **THE FIRST APPEAL AND ATTEMPT TO COMPEL ARBITRATION ON APPEAL**

6 20. Wells Fargo appealed the original Judgment in late 2010. LCHB took the lead in
7 litigating the appeal and presented the oral argument before our Court of Appeals.

8 21. During 2011, Class Counsel worked diligently on reviewing the trial record and
9 opposing the first appeal. Among the substantive and complex issues that were addressed on the
10 first appeal were: (a) federal preemption under the National Bank Act (which Wells Fargo
11 continued to pursue with respect to both the "unfair" prong claim and the statutory deception
12 claims); (b) liability under both prongs of the UCL and under the FAL; (c) standing of the named
13 Plaintiffs; (d) class certification; (e) the proper measurement of restitution; and (f) the
14 appropriateness of the injunctive relief. Plaintiffs also pursued a cross-appeal regarding the
15 denial of pre-judgment interest.

16 22. The first appeal also required that Class Counsel address the issues raised by the
17 American Bankers Association and the California Bankers Association in their amicus brief filed
18 in support of Wells Fargo's appeal, and consider the issues addressed by amicus Center for
19 Responsible Lending, which filed a brief in support of the Class.

20 23. Properly analyzing and briefing the multitude of issues raised on the appeal to
21 judgment required substantial time commitments and hard work by several attorneys and staff, as
22 directed by lead trial counsel to ensure maximum efficiency.

23 24. In addition, while the first appeal was pending, after the Supreme Court entered its
24 decision in *AT&T Mobility LLC v. Concepcion*, Wells Fargo filed a motion to vacate and remand,
25 arguing that it should be permitted to compel arbitration of Plaintiffs' claims (even though Wells
26 Fargo had made no mention of arbitration previously and the case had already been tried,
27 judgment entered, and its opening brief filed on appeal). Class Counsel briefed this issue twice,
28

1 once in opposing Wells Fargo's motion to vacate and again after the Court of Appeals ordered the
2 issue to be folded into the remaining briefing on the first appeal.

3 25. Oral Argument on the first appeal took place in May 2012, and was argued by
4 LCHB attorney Michael Sobol on behalf of the Class. Mr. Sobol, with the assistance of his
5 colleagues at LCHB and M&W, prepared thoroughly for the numerous issues raised.

6 26. The Court of Appeals issued its Opinion on December 26, 2012. The Court of
7 Appeals held that Plaintiffs' "unfair" prong claim was preempted by the NBA, but agreed with
8 Plaintiffs that the statutory claims based on Wells Fargo's misrepresentations were not
9 preempted. The Court of Appeals also affirmed this Court's findings on class certification, the
10 named Plaintiffs' standing, and class-wide liability for the statutory deception claims, and
11 rejected Wells Fargo's belated attempt to compel arbitration, agreeing with Plaintiffs that Wells
12 Fargo waived any arbitration right it may have had. The case was remanded to this Court to
13 determine the proper relief for the affirmed claims. *Gutierrez v. Wells Fargo Bank, N.A.* 704 F.3d
14 712 (9th Cir. 2012).

15 27. After the Court of Appeal issued its Opinion, Class Counsel sought rehearing,
16 asserting that the Court of Appeals had misapplied federal preemption standards and that, in any
17 event, under the original judgment and reasoning of this Court's post-trial Findings, the full \$203
18 million restitution amount remained appropriate for the affirmed claims. The petition was denied.

19 **RE-ENTRY OF JUDGMENT AFTER THE FIRST REMAND**

20 28. Following remand from the Court of Appeals, Class Counsel promptly moved for
21 re-entry of the full \$203 class restitution judgment for the affirmed claims. Class Counsel worked
22 hard on the briefing in support of this motion, and in preparing for the May 2, 2013 hearing,
23 including thoroughly reviewing the pertinent trial record. On May 14, 2013, over Wells Fargo's
24 opposition, the Court re-entered the full restitution judgment, ordered a new class-wide
25 injunction, and granted Class Counsel's request that post-judgment interest run from October
26 2010, the date of the original judgment. Doc. No. 586.

THE SECOND APPEAL

29. After the full restitution judgment was reinstated, Wells Fargo filed its second appeal in the Summer of 2013. Throughout late 2013 and early 2014, Class Counsel, with LCHB taking the laboring oar, worked diligently researching and briefing the issues raised by the second appeal, which included: the proper measure of restitution under the UCL “fraud” prong and the FAL, renewed attacks by Wells Fargo on class certification, Wells Fargo’s attempt to extend the Ninth Circuit’s prior preemption ruling, and arguments based on the Rules Enabling Act and Due Process Clause. Plaintiffs again pursued a cross-appeal on pre-judgment interest.

30. Oral Argument on the second appeal occurred in October 2014, and was again argued by LCHB attorney Michael Sobol, who, with the help of his colleagues at LCHB and M&W, prepared thoroughly for the argument. On October 29, 2014, the Court of Appeals issued its Opinion on the second appeal, affirming the class restitution judgment and directing that a modified injunction be entered. *Gutierrez v. Wells Fargo Bank, N.A.*, 2014 U.S. App. LEXIS 20892 (9th Cir. Oct. 29, 2014). After it unsuccessfully petitioned for rehearing, Wells Fargo moved the Court of Appeals to stay the issuance of the mandate while Wells Fargo considered whether to file a petition for writ of certiorari. Class Counsel opposed this motion to prevent further delay in providing relief to the Class. The Court of Appeals denied Wells Fargo’s motion to stay, and the mandate issued on January 7, 2015.

CLASS COUNSEL’S CONTINUING EFFORTS ON BEHALF OF THE CLASS

31. Class Counsel continues to diligently represent the Class, working hard on a new Joint Recommendation regarding notice, distribution of judgment proceeds, and other issues, and coordinating with potential class administrators regarding their submission of bids. Class Counsel’s work on behalf of the Class will continue. Among other things, Wells Fargo has indicated that it will likely file a petition for writ of certiorari with the Supreme Court, which Class Counsel will oppose on behalf of the Class. Moreover, Class Counsel will work to ensure that the restitution proceeds are distributed to the Class pursuant to the Court’s direction.

LCHB'S SUBMITTED TIME AND EXPENSES

32. Pursuant to the Court's Order re Attorney's Fees and Expenses dated January 30, 2015 (Doc. No. 619) (the "Fee Order"), the accompanying Declaration of Roger N. Heller sets forth the detailed descriptions and breakdown of LCHB's time by "project." Therein, the inclusion of the time and descriptions reflect LCHB's "billing judgment" for each project, *i.e.*, they reflect write-offs for unnecessary or duplicative time. As set forth in Mr. Heller's declaration, additional time, not reflected in the project breakdown, was written off as well.

33. The Fee Order requires that, after exercising billing judgment, for each "project," counsel state the percentage of the project directed at issues for which fees are awardable, justifying the percentage. There are a handful of projects for which LCHB seeks no compensation, not reflected in the project breakdown as the Fee Order requires that only entries for which compensation is sought be submitted. For all the project entries submitted by LCHB, I respectfully submit that one-hundred percent of the time on those projects is compensable. Each of those projects was required as part of LCHB's proper representation of the class.

34. The Fee Order states that counsel must provide detailed descriptions of the task for each work entry, and expressly cites examples of "trial preparation," and "attend trial," as being too generalized. As the Court will observe, LCHB timekeepers, including myself, have a substantial number of entries and a substantial amount of time bearing exactly those descriptions, without any further detail. In my 40 years of trial practice, this is typical. I am not aware of any precedent requiring more detailed descriptions of those tasks, and neither I or my colleagues have been able to identify any order of this Court in this case, or any applicable general standing order, containing such a requirement extant at the time those entries were contemporaneously made. If at the time we had been under an obligation to so report our trial preparation and trial time more specifically, we of course would have done so. But it is not now possible to reconstruct that time with more precision, having been asked to do so for the first time almost five years after trial.

35. Further, in the run-up to trial and during the conduct of trial, I respectfully submit that it is not reasonable to require from trial counsel descriptions of time with greater detail than "trial preparation" and "attend trial." Adhering to such a requirement would be an unproductive

1 expenditure of precious time at a crucial juncture of the case. Moreover, in the whirlwind of trial
 2 preparation, several tasks are often proceeding simultaneously, and separate “projects” often
 3 bleed into one another. For example, witness preparation often cannot be meaningfully separated
 4 from documentary foundation issues, certain *in limine* issues, or briefing on evidentiary issues,
 5 and *vice versa*. Counsel also often held team meetings in preparation for trial where in some
 6 instances a dozen or more issues would be addressed within a short space of time. Separating
 7 those tasks from one another would to some degree be arbitrary and unduly time-consuming.

8 36. I also respectfully submit that greater descriptions of “trial preparation” and
 9 “attend trial” would be of little value. The assessment of whether the time engaged in preparing
 10 for trial was well spent is not a function of the minute-by-minute accounting of daily time, but
 11 rather the results obtained at trial. There is, of course, no doubt that LCHB prepared for and
 12 attended trial. I have reviewed the amount of time expended by LCHB timekeepers in the run-up
 13 to trial, and I believe that given the complexity of the case, the scope of the rights and interests at
 14 stake, and the results achieved, that LCHB’s trial time was economical and reasonable.

15 37. LCHB made every reasonable effort to prevent the duplication of work or
 16 inefficiencies that might have resulted from having two firms working on this case. For example,
 17 internal meetings among Class Counsel were kept to a minimum, and were generally based on
 18 agendas prepared in advance. Assignments were made for specific tasks and activities so that it
 19 was clear which firm had primary responsibility over each task. I believe we did not overstaff
 20 hearings or the trial beyond what was reasonably necessary.

21 38. Based upon my experience with other class action matters, I believe that the time
 22 expended by LCHB in connection with this litigation is reasonable in amount and was necessary
 23 to ensure the success of this case, particularly given the hard-fought nature of this case, the
 24 complexity and novelty of the issues involved, and the excellent monetary and injunctive relief
 25 obtained for the Class and other California consumers.

26 **LCHB ATTORNEYS AND OTHER PERSONNEL SUBMITTING TIME**

27 39. I was lead trial counsel in this case. I received my law degree from Georgetown
 28 University Law Center in 1972. I have over 40 years of civil trial experience, and have been

1 repeatedly recognized as one of the top trial lawyers in California. In addition to this case, I have
2 tried over 35 civil cases, including complex cases such as In re FPI/Agretech Securities
3 Litigation, MDL No. 763 (D.Haw.), a class action on behalf of investors where the jury returned a
4 \$25 million verdict, and Claghorn v. Edsaco Ltd., C-98-3039-SI, where the jury returned a \$170.7
5 million verdict against Edsaco Ltd. My responsibilities in this case have included leading Class
6 Counsels' trial efforts and overall litigation of this matter, developing Plaintiffs' trial strategy,
7 examining key Wells Fargo witnesses at trial, and overseeing the appeals and post-trial matters.

8 40. Michael W. Sobol is a 1989 graduate of Boston University School of Law, and
9 practiced law in Massachusetts from 1989 to 1997. From 1995 through 1997, he was a Lecturer
10 in Law at Boston University School of Law. In 1997, he left his position as partner in the Boston
11 firm of Shafner, Gilleran & Mortensen, P.C. to join LCHB where he has almost exclusively
12 represented plaintiffs in consumer protection class actions. He has been a partner with LCHB
13 since 1999, and since 2002 has been the chair of LCHB's consumer protection practice group.
14 He has served as plaintiffs' class counsel in numerous nationwide consumer class action cases.
15 Mr. Sobol's responsibilities in this case have included conducting and overseeing the day-to-day
16 litigation of this matter, leading Plaintiffs' trial preparation efforts, working with Plaintiffs'
17 experts, assisting me and others in the preparation of questioning hostile witnesses, developing
18 Plaintiffs' litigation and trial strategy, preparing key pre-trial, mid-trial, post-trial, and post-
19 remand pleadings and overseeing the same, and directing necessary legal research. Mr. Sobol
20 served as the lead lawyer for the Plaintiffs in the two appeals in this case, presenting both oral
21 arguments.

22 41. Roger N. Heller has been a partner at LCHB since 2011, and was an associate
23 from 2008 until 2011. Mr. Heller received his law degree from Columbia University School of
24 Law in 2001, where he was a Senior Editor for the *Columbia Law Review*. From 2001 through
25 2005, he worked as a Litigation Associate at O'Melveny & Myers LLP's San Francisco office.
26 From 2005 through 2008, he was Senior Staff Attorney at Disability Rights Advocates in
27 Berkeley, California, specializing in class action litigation under federal and state anti-
28 discrimination laws. He joined LCHB in 2008, and since that time has worked exclusively on

1 consumer protection class actions. Mr. Heller's responsibilities in this case have included
2 preparing key pre-trial, mid-trial, post-trial, and post-remand briefs and pleadings, coordinating
3 Plaintiffs' trial preparation efforts, arguing a motion *in limine*, meeting and conferring with
4 opposing counsel, preparing for witness examinations at trial, preparing witness outlines and
5 analyzing and organizing evidence for trial, overseeing LCHB's paralegals and staff assisting
6 with the trial, drafting pre-trial and post-trial proposed findings, assisting with the briefing on the
7 two appeals, and conducting legal research.

8 42. Barry M. Himmelstein was a partner at LCHB from 1999 until 2011. He
9 graduated *magna cum laude* from the University of California, Hastings College of the Law, in
10 1991. Following graduation, Mr. Himmelstein clerked for the Hon. Charles A. Legge (Ret.) of
11 the Northern District of California. In 1993, he entered private practice at the San Francisco
12 office of Morrison & Foerster, LLP. At LCHB, Mr. Himmelstein specialized in consumer fraud
13 litigation. Mr. Himmelstein's responsibilities in this case included working with Plaintiffs'
14 experts, overseeing Plaintiffs' damages analysis, taking and defending expert depositions,
15 responding to Wells Fargo's attacks on Plaintiffs' damages analysis, briefing pre-trial motions,
16 and questioning damages experts at trial.

17 43. Mikaela Bernstein Palmerton was an associate at LCHB. She received her law
18 degree in 2008 from the University of San Francisco School of Law, and joined LCHB in 2008.
19 She was an extern for the Honorable Stuart Pollak at the California Court of Appeal, First
20 District. Her responsibilities in this case included preparing pleadings and pre-trial submissions,
21 conducting extensive legal research, arguing a motion *in limine*, coordinating Plaintiffs' trial
22 preparation efforts, and drafting post-trial proposed findings.

23 44. Jordan Elias was an associate at LCHB and is now currently of-counsel to LCHB.
24 He received his law degree from Stanford Law School in 2003. After graduation, he served as a
25 law clerk for the Honorable Cynthia Holcomb Hall of the U.S. Court of Appeals for the Ninth
26 Circuit, and then worked as an associate at Wilson Sonsini Goodrich & Rosati, where he was
27 awarded the John Wilson Award for outstanding representation of Wilson Sonsini's pro bono
28 clients. Since joining LCHB in 2008, Mr. Elias has focused on representing clients in consumer,

1 antitrust, and product liability cases. His responsibilities in this case have included preparing
2 mid-trial and post-trial pleadings, litigating preemption issues, assisting with the appeals, and
3 conducting legal research.

4 45. Allison Elgart was an associate at LCHB. She graduated *magna cum laude* from
5 Brown University in 2000, and from Harvard Law School in 2005, where she was Editor-in-Chief
6 of the *Harvard Civil Rights-Civil Liberties Law Review* and a practicing member of the Harvard
7 Legal Aid Bureau. Immediately after graduating from law school, Ms. Elgart clerked for the
8 Honorable Robert P. Patterson, Jr. of the United States District Court for the Southern District of
9 New York. At LCHB, she focused on representing plaintiffs in employment discrimination
10 litigation and consumer protection class action cases. Ms. Elgart's responsibilities in this case
11 included researching complex legal issues.

12 46. Allison Stocking was an associate at LCHB. She received her law degree in 2006
13 from Yale Law School, where she was an editor of the Yale Human Rights and Development
14 Law Journal. After graduation, she worked as a law clerk for the Honorable Barrington D.
15 Parker, Jr. of the United States Court of Appeals for the Second Circuit, and for the Honorable
16 John Gleeson of the United States District Court for the Eastern District of New York. Her
17 responsibilities in this case included researching post-trial issues, assisting with the briefing on
18 the first appeal including with respect to the amicus brief filed by the American Bankers
19 Association in support of Wells Fargo's appeal, and conducting extensive legal research on
20 preemption and other issues.

21 47. Nicole D. Sugnet (formerly Nicole D. Reynolds) became a partner at LCHB in
22 2015, and prior to that was an LCHB associate. She graduated from the University of California,
23 Hastings College of the Law in 2006. Since graduating from law school, Ms. Sugnet has focused
24 her practice exclusively on consumer class action litigation, and has litigated several cases
25 involving the banking and financial industries. She is the co-author of "Consumer Protection and
26 Employment Cases after Concepcion," published in the ABA Section of Litigation, Class Action
27 & Derivative Suits Committee Newsletter (Summer 2011). Her responsibilities in this case have
28 included work on post-trial and post-remand briefing and assisting with the second appeal.

1 48. Marc Pilotin is an associate at LCHB. He graduated from Boalt Hall School of
2 Law, University of California, Berkeley, in 2009, where he was Supervising Editor of the
3 *California Law Review*. After graduating from law school, he was a law clerk to the Honorable
4 Claudia Wilken (N.D. Cal.) from 2009 through 2011. While at LCHB, his practice has been
5 focused on prosecuting consumer, antitrust, and other class actions. His responsibilities in this
6 case have included conducting legal research and assisting with the second appeal.

7 49. Martin Quinones is an associate at LCHB. He graduated from the Berkeley
8 School of Law, University of California, Berkeley, in 2013. His responsibilities in this case have
9 included assisting with the second appeal and conducting legal research.

10 50. Jennifer Rudnick is a senior paralegal at LCHB, and has been the primary LCHB
11 paralegal working on this matter since 2009. Her responsibilities in this case have included
12 preparing and organizing trial exhibits and other materials, preparing documents and witness
13 binders for trial, preparing materials for use in briefing and at hearings, assisting with other trial
14 preparation efforts, assisting at trial, coordinating filings in the District Court and the Court of
15 Appeals, preparing excerpts of records for both appeals, and communicating with class members.

16 51. Jack Sanford was a paralegal at LCHB who worked on this case during the period
17 leading up to and including the trial, when the increased need for paralegal support and tight time
18 deadlines required the help of an additional LCHB paralegal to assist Ms. Rudnick and the rest of
19 the trial team. His responsibilities in this case included helping to prepare witness binders for
20 trial, preparing and organizing trial exhibits and other materials for trial, assisting at trial, and
21 communicating with class members.

22 52. LCHB's Litigation Support group consists of an experienced team of litigation
23 support specialists responsible primarily for: (a) preparing and conducting trial presentations and
24 similar in-court technical productions; (b) creating, managing, and searching case-specific
25 document and information databases (e.g., Summation); and (c) performing certain case-specific
26 data analyses (e.g., for use in evaluating damages). Because the personnel who make up LCHB's
27 Litigation Support group have extensive training and experience performing these specific,
28 technical tasks, it is more efficient and cost-effective, and in my judgment ultimately results in

1 better work product, for this sort of work to be assigned to these personnel as opposed to
2 paralegals with other areas of specialization and/or who normally perform less technical work.
3 Other firms might contract this work out to third parties, or assign a more general paralegal to
4 perform these sorts of tasks, and that would be perfectly reasonable. However, in my judgment,
5 the fact that LCHB has in-house personnel who specifically focus on these tasks represents a
6 significant benefit and value to the clients and class members that LCHB represents.

7 53. In this matter, LCHB's Litigation Support group played a critical role in trial
8 preparation, the trial, and other aspects of the litigation. Among other things, LCHB litigation
9 support specialists prepared synched video deposition excerpts, trial exhibits, demonstratives, and
10 other materials for presentation during the trial; conducted the technical aspects of Plaintiffs' trial
11 presentation, including the presentation of deposition excerpts and exhibits at trial; managed a
12 database of trial materials and other materials used by Class Counsel in this matter; and assisted
13 in the analysis of data used in measuring class damages.

14 54. Kirti Dugar is the Director of LCHB's Litigation Support group. Mr. Dugar has
15 decades of experience regarding all technical aspects of litigation and trials. Mr. Dugar's primary
16 responsibilities in this case have included managing Plaintiffs' trial presentation efforts, assisting
17 at trial, overseeing and coordinating the trial preparation efforts of LCHB's Litigation Support
18 group, preparing demonstratives and other materials for presentation at trial, and helping with
19 Plaintiffs' analysis of data in connection with analyzing class damages. The Litigation Support
20 team members who assisted Mr. Dugar in this case included LCHB employees Scott Alameda,
21 Arra Khararjian, Major Mugarage, Anthony Grant, and Sat Kriya Khalsa.

LCHB'S CO-COUNSEL

22
23 55. I had the opportunity to work at counsel table during the trial with Richard
24 McCune, M&W's lead lawyer on this case, and believe that he has significantly and positively
25 contributed to the litigation of this case. LCHB entered this case after the close of discovery, and
26 therefore had to rely on much of the pre-trial work done by Mr. McCune and his firm. All the
27 pre-trial, non-expert, deposition testimony was taken by Mr. McCune or at his direction. In
28 preparing for witness examinations at trial, I reviewed hundreds if not thousands of pages of

1 testimony that Mr. McCune elicited at various depositions and found it to be very useful and
2 effective. Needless to say, by the time LCHB appeared in the case, many pre-trial hurdles, such
3 as preemption, class certification, and a round of summary judgment, had been overcome.

4 56. LCHB has an agreement with M&W regarding the allocation of fees. (Mr.
5 McCune informs us that M&W has an agreement with counsel that assisted him earlier on in the
6 case, Brian Panish and Mitchell Breit, and that these lawyers and their firms will be paid from
7 M&W's portion of the fee award.) At the beginning of LCHB's involvement in May 2009, with
8 trial scheduled about one month away, the agreement between LCHB and M&W called for an
9 allocation of 60% to M&W and 40% to LCHB, reflecting their good faith estimate of their
10 anticipated respective contributions. After nearly six years of litigation and two appeals later,
11 both LCHB and M&W recognized that their original agreement no longer applied. Presently,
12 LCHB and M&W have agreed to a sliding scale ranging from 50/50 to 70/30, giving LCHB a
13 greater share the larger the fee award. I believe LCHB's present agreement with M&W is fair.

14 CONCLUSION

15 57. Based on my experience, the amount of time and resources that Class Counsel and
16 their staffs have committed to this case is quite reasonable, particularly in light of the extremely
17 hard-fought nature of the case, the novelty and complexity of the issues raised, and the magnitude
18 of the damages at issue. The work performed by Class Counsel was necessary and essential to
19 the success of this case, and is reflected in the outstanding monetary and non-monetary result
20 achieved for the Class. Moreover, Class Counsel worked efficiently in prosecuting this action,
21 and took appropriate steps to avoid duplication of efforts and other inefficiencies that may
22 otherwise have come from having two law firms representing the Class.

23 58. As Lead Trial Counsel, it was my responsibility to, among other things, direct and
24 oversee Class Counsels' trial preparation and trial presentation efforts. Based on my trial
25 experience, Class Counsel tried this action in a very efficient manner, particularly in light of the
26 complexity and importance of the trial and the creation of a record at trial. Responsibilities were
27 assigned in a clear manner, so as to avoid inefficiencies, and were assigned appropriately based
28 on each team member's respective experience and skills. Moreover, the trial itself was

1 appropriately staffed. While not every attorney present at trial had a speaking role each day, it
2 was necessary to have additional attorneys and staff present as resources of information, in order
3 to assist with the preparation and presentation of the evidence, and to be adequately prepared for
4 subsequent trial days and to address the numerous side issues and motions that arose during the
5 course of trial. The contributions of the numerous attorneys and staff from both Class Counsel
6 firms—both in the courtroom and outside the courtroom—were absolutely critical to Plaintiffs’
7 success at trial.

8
9 I declare under penalty of perjury that the foregoing is true and correct. Executed at San
10 Francisco, California this 17th day of February 2015.

11
12 /s/ Richard M. Heimann

13 Richard M. Heimann

14
15
16
17 1218054.3
18
19
20
21
22
23
24
25
26
27
28